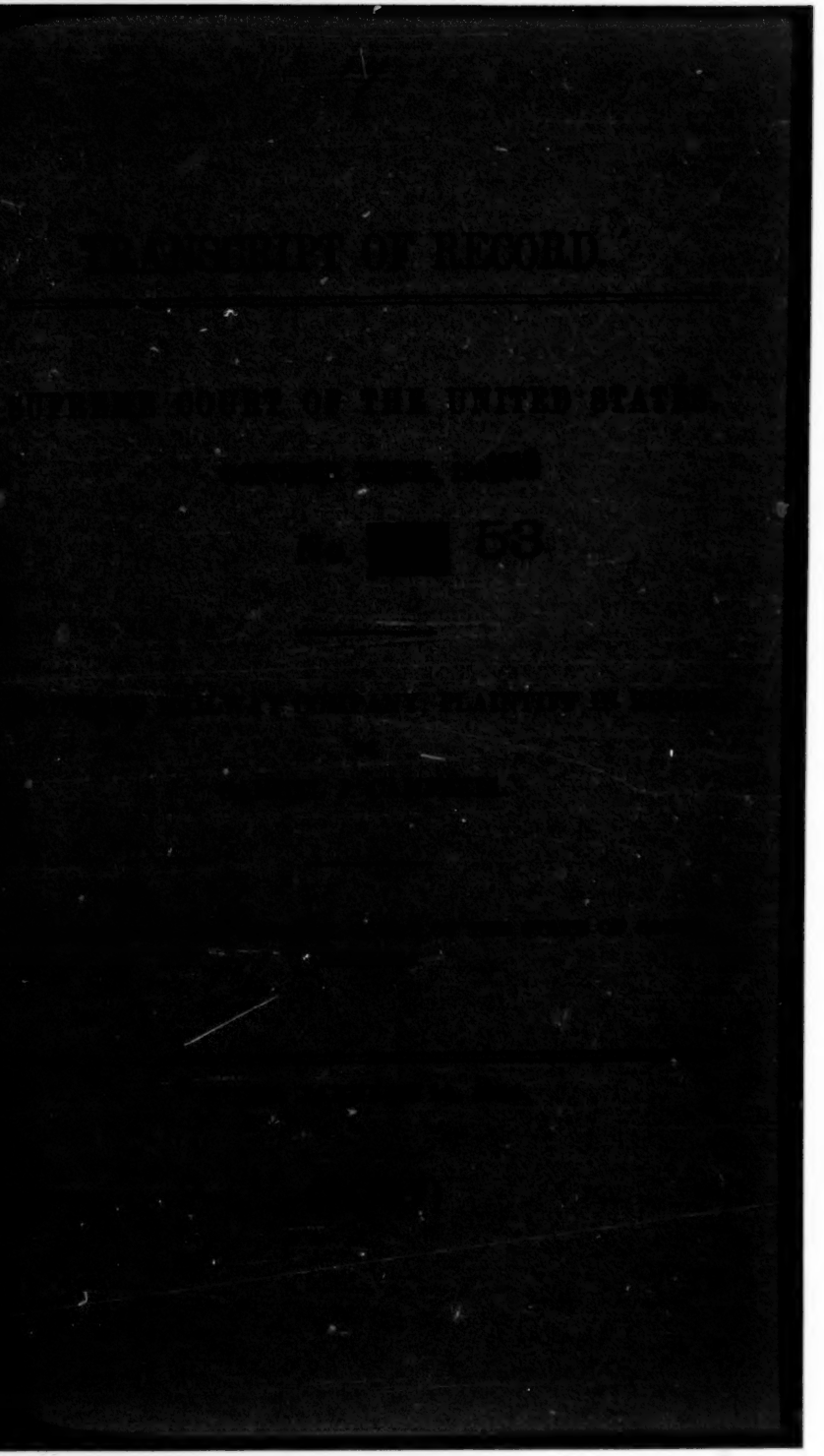

(24,017)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 337.

SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL J. CAMPBELL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 12, 1914.

1 STATE OF SOUTH CAROLINA:

In the Supreme Court, Fall Term, 1912, Tenth Circuit, Greenville County.

S. J. CAMPBELL, Plaintiff-Respondent,
against
SOUTHERN RAILWAY COMPANY, Defendant-Appellant.

Case Containing Exceptions.

Cothran, Dean & Cothran, Attorneys for Defendant-Appellant.
W. G. Sirrine, Attorney for Plaintiff-Respondent.

This action was instituted in the Court of Common Pleas of Greenville County on the 7th of April, 1911, for $1,900 damages on account of the alleged illegal willful and wanton act of the defendant in confiscating the plaintiff's mileage book and refusing to return either the ticket or the cash paid, at or near Greenville, S. C., on the 20th of November, 1910.

The case came on for trial before Hon. George E. Prince, Presiding Judge, at Greenville, June Term, 1912; upon an agreed statement of facts, contained in stipulation signed by counsel, a jury trial being waived.

The Presiding Judge held in favor of the plaintiff for the reasons hereinafter set forth, and rendered judgment in favor
2 of the plaintiff for Thirty-Seven ($37.00) Dollars and costs, which judgment was duly entered up, and from which this appeal comes in due form.

The Complaint.

1.

The defendant Southern Railway Company is a corporation organized by and under the laws of the State of Virginia, and operates a line of railway through Greenville County, South Carolina.

2.

On the 20th day of November 1910, the plaintiff being the owner and possessor of a thousand mile coupon book issued by defendant and commonly known and hereinafter referred to as "mileage book," applied to the agent of defendant at Greensboro, North Carolina, in its passenger station, for another thousand mile coupon book and purchased the same. For each of said books plaintiff paid the sum of twenty dollars.

3.

On the said day at Greensboro the plaintiff presented both said books to the agent of defendant and asked for and received two

mileage exchange tickets to Greenville, South Carolina. With these tickets the plaintiff and his wife travelled to Greenville, South Carolina, the same being accepted for passage on one of Defendant's regular passenger trains by one of its ticket collectors.

4.

After remaining in Greenville several days plaintiff and his wife, on the 24th day of November 1910, went to the passenger station there. Plaintiff presented his two mileage books, both of
3 same bearing his name and describing him by age, color, complexion and in other ways, as plaintiff is informed and believes, for the purpose of identification, and plaintiff asked for and received of defendant's agent two exchange tickets to Greensboro, the agent detaching the proper number of coupons from each of said books, which plaintiff is informed and believes were two hundred miles from each book, of the value of four dollars each.

5.

The plaintiff and his wife on this same day boarded one of defendant's regular passenger trains for Greensboro. After the train had proceeded several miles, the defendant's ticket collector came through train and asked plaintiff for his ticket. The plaintiff produced one of the exchange tickets which he had obtained from the defendant's agent at Greenville as aforesaid and offered it for himself. He also informed the ticket collector that Mrs. Campbell, who was riding in an adjoining car, was his wife, and he offered for her transportation from Greenville to Greensboro the other exchange ticket obtained as aforesaid at Greenville.

6.

The said ticket collector asked plaintiff if he had mileage books and required him to produce them. Upon looking at the said mileage books said ticket collector returned one of them to plaintiff, but retained the one containing unused coupons for six hundred miles, which calculated at the value of the whole book was and is of the value of twelve dollars, and also retained the mileage exchange ticket from Greenville to Greensboro which plaintiff had received for coupons for two hundred miles detached from said book, and he refused, although plaintiff demanded same, to give same to plaintiff, claiming that plaintiff had forfeited the ticket and the book. Said ticket collector then and there demanded payment of the fare of the plaintiff's wife.

4 7.

The car was filled with passengers and the act of the said ticket collector in refusing to accept the said ticket for passage and in taking up the same and also said mileage book, and in refusing to surrender the said ticket and mileage book to the plaintiff caused plaintiff to be thereby humiliated, embarrassed and mortified. Plaintiff's wife who was just recovering from a recent serious operation and

ıd been confined in a hospital, and was then in a weak condition, ıs made sick and ill and suffered seriously therefrom. Said ticket llector, in the presence of the other passengers, and over the pro- st of plaintiff, who insisted that he accept the said ticket for the ssage of his wife and return the said mileage book, refused to allow r to proceed unless plaintiff or she, herself, paid her fare in cash. s a r-sult of the acts of said ticket collector and his demands, and order to avoid humiliation, inconvenience and danger, and also event her being put off defendant's train, plaintiff paid his wife's re under protest.

8.

Thereafter the plaintiff applied to headquarters of the defendant mpany, at Washington, District of Columbia, demanding the re- rn of said mileage coupon and said mileage book, or five 35-100 llars which he paid said ticket collector and said mileage book, but e defendant Company refused and still refuses to surrender any of e same.

9.

Plaintiff alleges that the actions of ticket collector in the manner d in the particulars specified above, and action of the defendant mpany in confiscating his mileage book and refusing to return either the ticket or the cash paid, were unreasonable and illegal, willfully and wantonly done, and he alleges that he has been damaged in the sum of nineteen hundred dollars.

Wherefore, plaintiff prays judgment against the defendant in the n of nineteen hundred dollars and the costs of this action.

WM. G. SIRRINE,
Attorney for Plaintiff.

(Verified.)

The Answer.

The following is the Amended Answer, which conforms to the eement as contained in the stipulation, hereinafter set forth.
The defendant by this amended answer respectfully shows to the irt:

For a First Defense.

. That upon information and belief paragraphs 1, 2, 3, 4, 5, 6 l 8 are admitted.
. That upon information and belief paragraphs 7 and 9 are ied.

For a Second Defense.

. That on November 1, 1910, the plaintiff purchased from the endant at Greensboro, N. C., a certain interchangeable 1,000 mile

individual ticket, Form Z, No. 49352; that said ticket was a special-rate ticket sold at reduced rate in consideration that the same should be purchased, held, presented and used by the plaintiff in conformity with the contract printed and written upon said ticket, signed by the plaintiff, and made a part thereof.

2. That the plaintiff purchased said ticket at a reduced rate, less than the regular rate of fare upon the various lines of rail-
6 road stated thereon, in consideration of the agreements and obligations upon the plaintiff in said contract contained, and among others the following:

"Non-Transferable.—If this ticket, or ticket issued in exchange for coupons from this ticket, be presented to any agent or conductor by any other than the original purchaser, it will not be honored, but will be forfeited, and any agent or conductor of any line over which it reads shall have the right to take up and cancel such ticket or tickets."

3. That on November 20, 1910, the plaintiff still held said mileage ticket in which there were unused mileage coupons for 425 miles, more than enough to transport him from Greensboro, N. C., to Greenville, S. C., and return, the distance between the said points being 201 miles.

4. That on November 20, 1910, the plaintiff purchased from the defendant at Greensboro, N. C., a certain other interchangeable 1,000 mile individual ticket, Form 3A, No. 6219; that said ticket was a special-rate ticket sold at a reduced rate, in consideration that the same should be purchased, held, presented and used by the plaintiff in conformity with the contract printed and written upon said ticket, signed by the plaintiff and made part thereof.

5. That the plaintiff purchased said ticket at a reduced rate, less than the regular rate of fare upon the various lines of railroad stated thereon, in consideration of the agreements and obligations upon the plaintiff in said contract contained, and among others the following:

"Non-Transferable.—If this ticket, or ticket issued in exchange for coupons from this ticket, be presented to any agent or conductor by any other than the original purchaser, it will not be honored but will be forfeited, and any agent or conductor of any line over which it reads shall have the right to take up and cancel such ticket or tickets."

6. That the presentation of either of said mileage tickets
7 by the plaintiff for the transportation of his wife from Greenville to Greensboro was a violation of the terms of his contract above set forth; that he did present one of them for that purpose and thereby subjected himself to a forfeiture of the same.

7. That the mileage exchange ticket issued by the agent at Greenville upon the mileage ticket second above described, for transportation of plaintiff's wife from Greenville to Greensboro, was presented by the plaintiff for the transportation of a person other than the purchaser and owner, and under the terms of the contract was forfeited along with said mileage ticket.

For a Third Defense.

1. That it is now and was at and prior to the times mentioned in the complaint and in this answer a corporation created by and organized under the laws of the State of Virginia and engaged as a common carrier of passengers and freight for hire by railroad in interstate commerce between the city of Greensboro, in the State of North Carolina, and the city of Greenville, in the State of South Carolina, and from and to other points in the District of Columbia, the States of Virginia, Georgia, and South Carolina, and other States, subject to the provisions of the Act of Congress of the United States known as the Act to Regulate Commerce, approved February 4, 1887, and the several Acts amendatory thereof.

2. That at and prior to the times mentioned in the complaint and in this answer, the defendant, in obedience to and in compliance with the provisions and requirements of the said Act of Congress and its amendments regulating interstate commerce, had printed and filed with the Interstate Commerce Commission, created by said Act, and had published, posted, and was keeping open to public inspection schedules showing all rates, fares and charges for the transportation of passengers between different points on its own route
8 and between points on its own route and points on the routes of other carriers by railroad when over such routes a through route and joint rate had been established, and had fully complied with the requirements of said Acts of Congress and with the rules and regulations prescribed by the Interstate Commerce Commission.

3. That among the schedules of rates, fares and charges for the transportation of passengers printed, filed, posted, published, and kept open as aforesaid, the defendant and other railroad companies had printed, filed, posted, published, and was keeping open to public inspection as required by said Act of Congress and its amendments and in accordance with the rules of said Interstate Commerce Commission schedules known and designated as follows:

Joint Passenger Tariff No. 4073, I. C. C. No. F-825, in effect June 21, 1909.

Joint Passenger Tariff No. 4132, Supplement No. 1 to I. C. C. No. F-825, in effect July 1, 1909.

Joint Passenger Tariff No. 4250, Supplement No. 2 to I. C. C. No. F-825, in effect October 15, 1909.

Joint Passenger Tariff No. 4377, I. C. C. No. F-1163, in effect January 25, 1910.

Joint Passenger Tariff No. 4469, Supplement No. 1 to I. C. C. No. F-1163, in effect April 20, 1910.

Joint Passenger Tariff No. 4690, Supplement No. 2 to I. C. C. No. F-1163 in effect September 21, 1910.

Joint Passenger Tariff No. 4802, Supplement No. 3 to I. C. C. No F-1163, in effect February 15, 1911.

Copies of which, duly certified by the Interstate Commerce Commission in the manner provided by law, marked Exhibit "A,"
9 are hereto attached and made a part hereof; said Joint Passenger Tariff No. 4073, I. C. C. No. F-825, was in force and

effect throughout the months of July and September, 1909, as amended by Joint Passenger Tariff No. 4132, Supplement No. 1 to I. C. C. No. F-825; and said Joint Passenger Tariff No. 4469, Supplement No. 1 to I. C. C. No. F-1163, Joint Passenger Tariff No. 4690, Supplement No. 2 to I. C. C. No. F-1163, and Joint Passenger Tariff No. 4802, Supplement No. 3 to I. C. C. No. F-1163, *was* in force and effect from January 25, 1910, up to and including the month of February, 1911. Said schedules provided for the sale and issuance of an interchangeable one thousand mile individual tickets or mileage books upon the terms and conditions set forth in said schedules at and for the price of Twenty ($20) Dollars, or Two (2) Cents per mile.

The said schedules, as required by said Act of Congress and its amendments, plainly stated all the privileges and facilities granted or allowed and the rules or regulations which in anywise changed, affected, or determined any part of the aggregate of said rates, fares, and charges, or the value of the service rendered to passengers and in all other respects complied with the requirements of the said Act of Congress and its amendments and the rules of the Interstate Commerce Commission.

Among the regulations and conditions contained in said schedules and in force throughout the months of July and September, 1909, and the month of February, 1911, and at all times between the said periods and subsequently, were the following, as will appear from the exhibit filed as aforesaid with this answer as a part hereof:

"Exchange Requirement.—Mileage coupons (except as noted below) will not be honored for passage on trains or steamers or in checking baggage (except from non-agency stations and agency stations not open for the sale of tickets) but must be presented at ticket office and there exchanged for continuous passage ticket, which continuous passage ticket will be honored in checking baggage and for passage when presented in connection with the mileage ticket."

"Non-Transferable.—If a mileage ticket or ticket issued in exchange for coupons therefrom be presented to an agent or conductor by any other than the original purchaser, it will not be honored but will be forfeited, and any agent or conductor of any line over which it reads shall have the right to take up and cancel such ticket or tickets."

Greenville was not a non-agency station, nor was it an agency station not open for the sale of tickets, but on the contrary it was an agency station open for the sale and exchange of tickets.

4. Defendant avers that the plaintiff presented for the transportation of his wife one of the mileage tickets hereinbefore referred to, which had been issued to him, in his name, and which by its terms and the provisions of said schedule was good only for his own transportation; procured thereon a mileage exchange ticket for his wife, and thereby violated said conditions and rendered himself liable to a forfeiture of said mileage ticket.

5. Defendant avers that the provisions of its said schedules filed, published, and made effective as aforesaid in accordance with the

Act of Congress and the amendments thereto became binding upon the defendant and upon the plaintiff and upon all the world as the only lawful provisions and conditions under which the mileage books, tickets, and exchange tickets therein mentioned might lawfully be used or honored for the transportation of passengers by this defendant; and defendant specifically sets up and claims the benefit and protection of Article I, Clause 8, Paragraph 3 of the Constitution of the United States, and of the laws passed in pursuance
11 thereof, in justification of its conduct and of the conduct of its agents and employees at the times and upon the occasions mentioned in the complaint and in this answer, and pleads the same and the matters and things alleged in the several paragraphs of this further answer and defense in bar of any recovery by the plaintiff in this action.

Whereof, defendant demands judgment that the complaint be dismissed, with costs taxed to the plaintiff.

COTHRAN, DEAN & COTHRAN,
Defendant's Attorneys.

Agreed Facts.

Stipulation.

It is agreed between counsel that upon the trial of this case the following facts be admitted:

1. The allegations contained in paragraphs 1, 2, 3, 4, 5, 6 and 8 of the complaint.

2. That the ticket collector demanded cash fare for the plaintiff's wife, which was paid by the plaintiff.

3. The allegations contained in paragraphs 1, 2, 3, 4 and 5 of the second defense in the defendant's answer.

4. It is agreed that the defendant's answer be amended by setting up the facts in reference to Inter-State Commerce Law as are set up in its answer in the case of George J. Douglass vs. Atlanta & Charlotte Air Line Railway Company, with appropriate changes; and that the facts herein (but not conclusions of law) be admitted so far as that defense is concerned.

5. The plaintiff does not admit by this stipulation that he knew the terms or conditions of the contract printed in the mileage books.

6. It is agreed that a jury trial be waived and that the presiding Judge upon the pleadings and these stipulations render judgment as follows:

If for the plaintiff, that the plaintiff be entitled to recover the mileage book taken up by defendant or at his option the value
12 thereof Twelve Dollars; and Twenty-five Dollars damages.

If for the defendant, the plaintiff take nothing by his suit and pay the costs.

WM. G. SIRRINE,
Attorney for Plaintiff.
COTHRAN, DEAN & COTHRAN,
Attorneys for Defendant.

Greenville, S. C., June 8, 1912.

Rulings of Judge.

Suppose the man had said to the conductor: "I have a mileage book; I would like to give my friend here the benefit of riding on a two-cent mileage rate; pull his fare out of my mileage book." There is no misrepresentation about that. Do you say that forfeits the book? The plaintiff had both books; they were both in his name. The ticket collector comes along and the plaintiff says: "That is my wife sitting over there; here are my tickets, both of them signed in my name by me; I want to carry my wife on my book." The conductor very properly declined to allow the wife to ride upon the book of the plaintiff; it was not a family ticket, it was an individual book; and he was right in requiring the payment of her fare. But does that forfeit the book? It was not tendered by another than the owner; it was tendered by the owner and not under false pretenses, no false statement that his wife's name is other than it *than it* was. I think the purpose of the law is to prevent people from fraudulently using the books of other people. I mean fraudulently as to the railroad not as to other people necessarily, but as to the railroad.

Now the question is, is this within the letter of a forfeiture, when it is presented under no disguise, under no false statement
13 that his wife's name is other than it is, under no pretense that his wife owned the book, but under the admission that it was his book?

The conductor did right not to accept the ticket, but did that forfeit this mileage, or did it forfeit his book? The fac- that the ra-lroad declined to accept it for his wife's transportation did not render it liable to forfeiture unless there was some misrepresentation. If there was a candid statement about the whole thing, and I infer from the pleading that there was no concealment, I don't see why the ticket should be forfeited, either in right, morals or law. I can see no reason for it.

I therefore render judgment in favor of the plaintiff against the defendant for the sum of Twelve Dollars, the value of the mileage book taken up, and Twenty-five Dollars damages according to the stipulation of counsel.

Notice of Appeal.

To W. G. Sirrine, Esq., Plaintiff's Attorney.

Take Notice: That the defendant intends to appeal to the Supreme Court from the judgment in favor of the plaintiff against the defendant rendered at June Term, 1912, and entered or to be entered.

COTHRAN, DEAN & COTHRAN,
Defendant's Attorneys.

Greenville, S. C., July 1, 1912.

Exceptions.

The defendant appeals to the Supreme Court from the judgment rein upon the following grounds:

I.

The Presiding Judge erred in holding under the stipulations ntained in the written contract that the plaintiff did not subject s mileage book to forfeiture by presenting it with the mileage change ticket for his wife's transportation.

II.

The Presiding Judge erred in not holding that when the plaintiff esented to the ticket collector the mileage book issued in his name d the mileage exchange ticket issued in exchange for coupons erefrom, for his wife's transportation, both the book and the ex-ange ticket were forfeited under the contract and the ticket col-tor had the right to take up and cancel such mileage book and leage exchange ticket.

III.

The Presiding Judge erred in not holding that when the plaintiff dered the mileage book and the mileage exchange ticket to the nductor for his wife's transportation, he was acting as agent for wife and the stipulation of forfeiture upon the presentation same by any other than the owner was applicable.

IV.

The Presiding Judge erred in not holding that under the facts ted in the defendant's third defense, all of which are admitted the stipulation to be true, the provisions of defendant's schedules d, published and made effective as therein stated, including the vision that if either said mileage book or ticket be presented by y other than the original purchaser, the same should be for-ed, became binding upon the defendant and upon the plaintiff the only provisions and conditions under which said mileage k and exchange ticket might lawfully be used or honored for transportation of passengers by the defendant; and the defend-specifically sets up and claims the benefit and protection of icle I, Clause 8, paragraph 3, of the Constitution of the United tes and of the laws passed in pursuance thereof in justification its conduct and of the conduct of its agents and servants as com-plained of. And the defendant insists that a proper con-struction of said provision in said contract under said Con-stitution and laws required the defendant to declare said eage book and ticket forfeited and fully justified it in so doing.

V.

The Presiding Judge erred in holding that the right to forfeit the book and ticket did not exist except in case of wilful misrepresentation and deceit.

VI.

The Presiding Judge erred in rendering judgment in favor of the plaintiff for Thirty-seven Dollars; whereas under the admitted facts his judgment should have been in favor of the defendant.

COTHRAN, DEAN & COTHRAN,
Attorneys for Defendant-Appellant.

Greenville, S. C., August 13, 1912.

16 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Tenth Circuit, Greenville County, November Term, 1912.

No. 114.

S. J. CAMPBELL, Plaintiff-Respondent,
against
SOUTHERN RAILWAY COMPANY, Defendant-Appellants.

Opinion by R. C. Watts, A. J.

This action was commenced in the Court of Common Pleas for Greenville County in April 1911 for $1,900.00 damages, on account of the alleged illegal, wilful and wanton act of the defendant in confiscating the plaintiff's mileage book and refusing to return either exchange ticket or cash paid near Greenville, South Carolina, on November 24, 1910. The case was tried before Judge Prince, in June 1912; upon an agreed state of acts, contained in the stipulation signed by Counsel a jury trial having been waived. This agreement should be set out in the report of the case. Judge Prince rendered judgment for the plaintiff for $37.00 and costs and his rulings should be set forth in the report of the case. Defendants appealed, and questions the correctness of the presiding Judge's rulings and findings by six (6) exceptions, duly filed.

The whole question turns upon the point whether or not there was a contract printed in the mileage book by which plaintiff forfeited the same. This is raised by all of the exceptions.

The plaintiff purchased from the defendant company one mileage book, at Greensboro, North Carolina, for Twenty Dollars. At that time he was the owner of a part of One thousand mile ticket with four hundred and twenty five miles unused for which he had paid Twenty Dollars.

17 This was November 20, 1910. On that day, he presented both mileage books to the defendant's agent at Greensboro, North Carolina and asked for and obtained from him two

leage exchange tickets to Greenville, South Carolina. The dis-
ce from Greensboro to Greenville is Two Hundred miles. This
in one mileage book Two Hundred and Twenty five and in
other Eight Hundred miles. It does not appear that the ticket
nt at Greensboro noticed that both mileage books were in plain-
's name or that anything passed betweeen them other than that
mileage books were offered and accepted by the agent and ex-
nge made. The plaintiff and his wife traveled upon the mile-
exchange tickets from Greensboro to Greenville and they were
epted without question by the conductor on the train.
They remained in Greenville until November 24, 1910, and wish-
to return to Greensboro on that day plaintiff again presented
h mileage books to the ticket agent of the defendant at Green-
e, South Carolina, and asked for and received two mileage ex-
nge tickets to Greensboro, North Carolina; the agent detaching
hundred miles from each mileage book, leaving on one twenty
miles and on the other six hundred miles. It does not appear
t the ticket agent noticed both mileage books were in plaintiff's
ne or that there was any conversation in reference to the matter.
Plaintiff and his wife boarded defendant's train for Greensboro
when the collector of tickets of defendant proceeded to collect
ets the plaintiff produced the two mileage exchange tickets
he had received from the ticket agent at Greenville, one for
self and the other for his wife, and upon demand produced
n mileage books issued in his name. The ticket collector re-
ed the mileage book containing Six Hundred unused mileage
pons and the mileage exchange corresponding therewith, claim-
ing the same was forfeited under the terms and conditions
of the ticket and collected fare from plaintiff for his wife.
Defendant's ticket collector required the plaintiff to pay
fare for the wife and confiscated the Two Hundred miles repre-
ed by the exchange and Six Hundred miles unused mileage in
mileage book. There was no evidence of concealment by the
ntiff or any fraud or misrepresentation. The books presented to
ticket agent for exchange were presented by the original pur-
er. He had paid full value for the same and was in no manner
mpting to defraud the defendant. He offered the books of
age to the ticket agent at Greenville and received in exchange,
efor, without question, two tickets to Greensboro, North Caro-
. This was the person who was authorized to sell tickets, ex-
nge mileage etc. When the tickets were offered on the train
plaintiff offered them for both himself and wife. He, as orig-
purchaser, was in possession of both mileage books and there
o evidence that his wife was ever in possession of either mileage
. The conductor had no right to both exact fare for the wife
confiscate mileage. The claim of the railroad was satisfied
n full fare was paid for the wife's passage, and the defendant
no right to confiscate the plaintiff's property in the manner it
The ticket agent at Greenville issued the two tickets in ex-
nge for mileage. When one was offered for the wife the ticket
ctor declined to receive it for her and demanded the fare

which was paid. The plaintiff certainly had the right to ride on his. Both husband and wife were then full passengers, having paid for their passage. Why should plaintiff's property then be confiscated and he mulcted in damages? In Smith vs. Southern Railway Company, 88 S. C. 425 Mr. Justice Hydrick says, "The Company can act only by agents—It will not be heard to say that it manages its business in such a way that it makes a contract through one of its agents which it may violate through another with impunity to itself. There can be no doubt that the
19 defendant is liable for the conduct of its agents, acting within the apparent scope of their authority. That is elementary law. It is a ticket agent's duty, and therefore, within the scope of his authority, to give passengers correct information with regard to their tickets, and provide them, upon payment of the fare, with proper tickets. Therefore a passenger has the right to rely upon information given him by the ticket agent. The traveling public are not concerned with the management of the affairs of the railroad companies. They are not presumed to know the rules and regulations adopted by the companies for the guidance of their agents; nor are they presumed to know the limitations of the authority of the agents of the companies.—There is some conflict in the authorities, but the weight of reason and trend of judicial thought is in favor of the doctrine that a passenger has the right to rely upon the statement and assurances of a ticket agent as to the sufficiency of the ticket furnished him as evidence of his right as a passenger, and that the carrier is liable for the errors and omissions of such agents resulting in injury to the passenger." Childs vs. Ry., 69 S. C., 327, 48 S. E., 252, and other cases quoted.

In this case, plaintiff presents two mileage books and asks the ticket agent to exchange for two tickets. This agent does. An inspection on his part would have shown the plaintiff was the owner of both mileage books and did not need two tickets to carry one passenger. By act of the ticket agent at Greenville two tickets were given in exchange for mileage and when plaintiff's attention was directed that his wife could not use the ticket he paid full fare for her, and, yet defendant retained his mileage book when nothing was due the defendant.

Quoting from the opinion of Mr. Justice Hydrick in Smith vs. Southern Railway, 88 S. C. 427, he says, "The foregoing
20 cases also hold that it is the duty of the conductor, in such circumstances, to heed the reasonable explanations of a passenger as to his ticket, or his right to ride, and our own decisions are to the same effect. Myers v. Railway, 64 S. C., 514, 42 S. E., 598; Chiles v. Railway, 69 S. C., 327, 48 S. E., 252; Tant v. Railway, 87 S. C., 184: Tolleson v. Railway, 88 S. C., 7, 70 S. E., 311. The rule requiring the conductor to heed the reasonable explanation of the passenger, instead of allowing him to demand the payment of fare, on pain of expulsion from the train, works less hardship, inconvenience and expense on the carrier than the opposite rule would on the passenger; for it is generally an easy matter for the conductor to ascertain whether the explanation of the passenger

is true or false, because the stations along the railroads are nearly all connected by telephone or telegraph lines, which the agents of the company may use with little trouble, and at little or no expense. It is a serious matter to expel a passenger from a train. It subjects him to humilation, and is calculated to wound the feelings of any self-respecting passenger. Therefore, the law allows punitive damages for the wrongful expulsion of a passenger, and also, for compelling him to pay money under threat of wrongful expulsion. Myers v. Railway and Tolleson v. Railway, supra. Consequently the law is that a carrier must be allowed to resort to so harsh and extreme a measure only at the peril of being able to justify it."

Under the evidence in this case, that two ticket agents, acting in the apparent scope of their authority, exchanged tickets for mileage coupons for both plaintiff and his wife out of two mileage books, the property of the husband, and when plaintiff was told his wife could not ride on her ticket and he fully explained the facts to the ticket collector and upon demand paid full fare for her, the retention of the mileage book, his property, an invasion of his rights not
21 justified by the facts of the case.

The exceptions are overruled and judgment affirmed.

We concur:

EUGENE B. GARY, *C. J.*
C. A. WOODS, *A. J.*
D. E. HYDRICK, *A. J.*
T. B. FRASER, *A. J.*

(Report.)

22 The Supreme Court of South Carolina.

S. J. CAMPBELL, Plaintiff,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Petition for Writ of Error.

Comes now the Southern Railway Company, the above named defendant, and says:

That on the 20th day of March, 1913, judgment in this suit was rendered by the Supreme Court of South Carolina, which is the highest Court in the State in which a decision in the suit could be had, against defendant therein, and thereafter, to wit, on the 30th day of March, 1913, the remittitur from said Court was filed in the Court of Common Pleas for Greenville County, South Carolina, directing and adjudging that the judgment of said Court of Common Pleas be affirmed; whereupon said judgment became final.

In said suit a title, right, privilege, and immunity was duly and specially set up and claimed by your petitioner under the Constitution, and under a statute, of the United States, and the decision of the Supreme Court of South Carolina was against the title, right, privilege, and immunity so set up and claimed, all of which will

more fully and in more detail appear in the assignment of errors filed herewith.

Wherefore, and inasmuch as your petitioner feels aggrieved by the final decision of the Supreme Court of South Carolina in rendering judgment against it in this action, it respectfully prays that a writ of error may issue from the Supreme Court of the United States to the Supreme Court of South Carolina for the correcting of the errors complained of and that an order be entered fixing the
23 amount of a supersedeas bond herein.

L. E. JEFFERIES,
COTHRAN, DEAN & COTHRAN,
Attorneys for Southern Railway Company.

STATE OF SOUTH CAROLINA,
Supreme Court, To wit:

Let the writ of error above prayed for issue, upon the execution of a bond by Southern Railway Company, payable to S. J. Campbell, in the sum of two hundred dollars ($200.00); such bond when approved to act as a supersedeas.

December 13th, 1913.

EUGENE B. GARY,
Chief Justice of the Supreme Court of South Carolina.

24 The Supreme Court of South Carolina.

S. J. CAMPBELL, Plaintiff,
versus
SOUTHERN RAILWAY COMPANY, Defendant.

Assignment of Errors and Prayer for Reversal.

Now comes Southern Railway Company, the above defendant, and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following assignment:

This was a civil action commenced by the plaintiff, S. J. Campbell, against Southern Railway Company, defendant, to recover Nineteen Hundred Dollars ($1,900.00) damages on account of the alleged illegal, wilful and wanton act of the defendant in confiscating plaintiff's mileage book and mileage exchange ticket, and refusing to return either or cash fare paid, near Greenville, South Carolina, November 24, 1910.

The facts were agreed to by a stipulation signed by counsel for plaintiff and defendant.

On November 1, 1910, the plaintiff purchased from the defendant, at Greensboro, North Carolina, a certain interchangeable one thousand mile individual ticket; on November 20, 1910, the plaintiff purchased another interchangeable one thousand mile individual

:ket. On this latter date he presented both mileage books to the
fendant's agent at Greensboro, N. C., and asked for and obtained
om him two mileage exchange tickets to Greenville, S. C. With
ese tickets the plaintiff and his wife travelled to Greenville, S. C.,
e same being accepted for passage on one of the defendant's regular
passenger trains, by one of its ticket collectors. On November
24, 1910, the plaintiff presented the two said mileage books,
both bearing his name and describing him by age, color,
mplexion, and in other ways, to one of defendant's agents at
reenville, S. C., and requested and received two mileage exchange
kets to Greensboro, N. C., the agent detaching the proper number
coupons. On this same day plaintiff and his wife boarded one of
fendant's regular passenger trains for Greensboro, N. C. Upon
ing requested by the ticket collector of this train for his ticket, the
aintiff produced one of the exchange tickets which he had obtained
om the defendant's agent at Greenville as aforesaid and offered it
himself. He also informed the ticket collector that Mrs. Camp-
ll, who was riding in an adjoining car, was his wife, and he of-
ed for her transportation from Greenville to Greensboro, the other
change ticket obtained as aforesaid at Greenville. The ticket col-
tor required plaintiff to produce his mileage books and, upon
oking at the said mileage books, the ticket collector returned one
them to plaintiff, but retained the one containing coupons unused
six hundred miles, and also retained one of the mileage exchange
kets which plaintiff had received for coupons for two hundred
les detached from said book. The ticket collector refused, al-
ough the plaintiff demanded the same, to give them to the plain-
, claiming that they had been forfeited, and demanded payment
fare for the plaintiff's wife, which fare was paid, under protest.
Southern Railway Company, defendant above, a common carrier
passengers, for hire, by railroad, engaged in interstate commerce,
d, in obedience to and in compliance with the provisions and re-
irements of the Act of Congress known as the Act to Regulate
mmerce, approved February 4, 1887, and the several acts amenda-
y thereof, printed and filed with the Interstate Commerce Com-
mission, created by said Act, and had published, posted, and
and was keeping open to public inspection schedules show-
ing all rates, fares and charges for the transportation of pas-
gers between points on its own route and points on the routes of
er carriers by railroad when over such routes a through route
d joint rate had been established, and had fully complied with the
uirements of the said Act of Congress, and with the rules and
ulations prescribed by the Interstate Commerce Commission.
Among the regulations and conditions contained in said sched-
s and in force throughout the months of July and September,
09 and the month of February, 1911, and at all times between
d period were the following:
'Non-Transferable. If a mileage ticket or ticket issued in ex-
nge for coupons therefrom be presented to an agent or con-
tor by any other than the original purchaser, it will not be hon-
d but will be forfeited, and any agent or conductor of any line

over which it reads shall have the right to take up and cancel such a ticket or tickets."

Southern Railway Company, defendant, respectfully assigns as errors in the record and proceedings in this cause, in the Supreme Court of South Carolina, the following:

1. The Supreme Court of South Carolina erred in holding and deciding that the mileage exchange book and mileage exchange ticket were not properly forfeited, in that such decision was contrary to and in violation of the schedules and tariffs lawfully in effect, in pursuance to the so called Act of Congress, approved February 4, 1887, and the several amendatory thereof, enacted by the Congress of the United States in pursuance of the power granted it by Article 1, clause 8, paragraph 3 of the Constitution of the United States, the benefit and protection of which said clause of the Constitution and said Act of Congress were duly set up and specially claimed in these proceedings. The defendant insists that by a proper construction of said schedules and tariffs passed in pursuance of said Act of Congress, the mileage book and mileage exchange ticket were properly forfeited.

27 2. The said Supreme Court erred in holding and deciding that the mileage exchange book and mileage exchange ticket were not properly forfeited in that such was contrary to and in violation of the schedules and tariffs lawfully in effect, in pursuance of the so called Act to Regulate Commerce, approved February 4, 1887, and the several Acts amendatory thereof, by reason of the fact that the plaintiff, in tendering the mileage book and mileage exchange ticket for his wife, was acting as agent of his wife, and by a proper construction of said tariff the stipulation in said tariff as to forfeiture of mileage books and mileage exchange tickets was applicable.

3. The said Supreme Court erred in holding and deciding that the mileage book and mileage exchange ticket was not properly forfeited, apparently on the theory that the agent and employees of the defendant, by their actions, had waived the effect of the aforesaid provision as to forfeiture, and in holding that, as a consequence, the ticket collector of the defendant should have listened to the reasonable explanations of the plaintiff and should have been satisfied with the cash fare paid for the wife, in that such is contrary to and in violation of the tariffs and schedules lawfully in effect in conformity to the provisions of the so called Act to Regulate Commerce, approved February 4, 1887, for said tariffs and schedules, lawfully in effect as aforesaid, became binding on the defendant and the plaintiff and upon the whole world as the only lawful provisions and conditions under which the mileage books and mileage exchange tickets might lawfully be used or honored for the transportation of passengers by this defendant and could not lawfully be waived, altered or changed by either plaintiff or defendant.

4. The said Supreme Court, therefore, erred in affirming the judgment of the lower court and in rendering final judgment against the defendant.

27½ Wherefore, for these, and other manifest errors appearing in the record, the said Southern Railway Company, defend-

nt, prays that the judgment of the Supreme Court of the State of outh Carolina herein, dated March 20th, 1913, be reversed, set side and held for naught and that a judgment be rendered for he defendant company granting its rights under the Constitution nd statutes of the United States and the defendant also prays for judgment in its favor for costs.

L. E. JEFFERIES,
COTHRAN, DEAN & COTHRAN,
Attorneys for Southern Railway Company.

8 *Writ of Error.*

NITED STATES OF AMERICA, *ss:*

he President of the United States of America to the Honorable the Justices of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition f the judgment of a plea which is in the said Court, before you, or me of your, being the highest court of law or equity of the said tate in which a decision could be had in the said suit between amuel J. Campbell and Southern Railway Company, a corporaon, wherein was drawn in question the construction of a clause f the Constitution, and a statute, of the United States, and the ecision was against the title, right, privilege, or immunity specially t up or claimed under such clause of the said Constitution and the id statute; a manifest error hath happened, to the great damage of e said Southern Railway Company, as by its complaint appears. e being willing that error, if any hath been, should be duly corcted, and full and speedy justice done to the parties aforesaid in is behalf, do command you, if judgment be therein given, at then under your seal, distinctly and openly you send the record id proceedings aforesaid, with all things concerning the same, to e Supreme Court of the United States, together with this writ, that you have the same in the said Supreme Court at Washingn, D. C., within thirty days from the date hereof, that the record id proceedings aforesaid being inspected, the said Supreme Court ay cause further to be done therein to correct that error, what of ght, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 15 day of ecember, in the year of our Lord one thousand nine hundred and irteen.

[Seal United States District Court, Eastern District, So. Ca.]

RICH. W. HILLSON,
Clerk District Court of United States,
District of South Carolina.

Allowed:
EUGENE B. GARY,
Chief Justice of the Supreme
Court of South Carolina.

29½ In the Supreme Court of South Carolina.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
against
S. J. CAMPBELL, Defendant in Error.

Bond.

Know all men by these presents: That we, Southern Railway Company, a corporation of the State of Virginia, as Principal, and L. M. McBee as Surety, are held and securely bound unto the above named S. J. Campbell, in the sum of Two hundred ($200.00) dollars, to be paid to him and for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the — day of December, in the year of our Lord one thousand nine hundred and thirteen.

Whereas, the above named Southern Railway Company, plaintiff in error, seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of South Carolina.

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and virtue.

SOUTHERN RAILWAY COMPANY, [L. S.]
By T. P. COTHRAN, *Atty.*
L. M. McBEE. [L. S.]

This bond approved this 13th day of December, A. D. 1913, and to operate as a supersedeas.

EUGENE M. GARY,
Chief Justice of the Supreme Court
of the State of South Carolina.

30 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of South Carolina:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record of the assignment of errors, and of all proceedings of the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the

seal of said Supreme Court of South Carolina, in the City of Columbia, South Carolina, this December 20th, 1913.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

31 *Authentication of Record.*

I, U. R. Brooks, clerk of said court, do hereby certify that the foregoing pages, numbered from 1 to 15, inclusive, are a true, full and complete transcript of the record and proceedings, in the case of S. J. Campbell, plaintiff, versus Southern Railway Company, defendant, and also of the opinion of the court rendered therein, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Columbia, South Carolina, this December 20th, 1913.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

32 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to — Campbell, designated as S. J. Campbell, South Carolina, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of South Carolina, wherein Southern Railway Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the chief justice of the supreme court of the State of South Carolina, this 13th day of December, 1913.

EUGENE B. GARY,
Chief Justice of the Supreme Court of the State of South Carolina.

Attest:

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Clerk *of the Supreme Court of the State of South Carolina.*

STATE OF SOUTH CAROLINA,
County of Greenville:

I, the undersigned attorney of Record for the defendant in error of the above entitled cause, hereby acknowledge due service of the above citation, and enter an appearance for said defendant in error in the Supreme Court of the United States.

WM. G. SIRRINE,
Attorney for S. J. Campbell.

33 *Certificate of Lodgment.*

SUPREME COURT,
State of South Carolina, ss:

I, U. R. Brooks, Clerk of the said court, do hereby certify that there was lodged with me as such clerk on December 20th, 1913, in the matter of Southern Railway Company versus S. J. Campbell:

1. The original bond of which a copy is here set forth.
2. Two copies of the writ of error, as herein set forth; one for the defendant, and one for file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Columbia, South Carolina, this December 20th, 1913.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Endorsed on cover: File No. 24,017. South Carolina Supreme Court. Term No. 337. Southern Railway Company, plaintiff in error, vs. Samuel J. Campbell. Filed January 14th, 1914. File No. 24,017.

/ 5 —

Office Supreme Court, U. S.
FILED
APR 5 1915
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 337 53

SOUTHERN RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

SAMUEL J. CAMPBELL, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

L. E. JEFFRIES,
Attorney for Plaintiff in Error.

COTHRAN, DEAN & COTHRAN,
Of Counsel.

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UPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 337.

SOUTHERN RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

AMUEL J. CAMPBELL, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

NOTE.—For convenience in this statement the aintiff in error is called defendant, and the dendant in error plaintiff.

This action was instituted in the Court of Comon Pleas for Greenville County, South Carolina, the 7th day of April, 1911, for $1,900 damages account of the alleged illegal, willful and wanton t of the defendant in confiscating the plaintiff's lleage book.

The case was tried upon an agreed statement of cts, contained in the stipulation signed by coun-

sel, a jury trial having been waived. The presiding judge rendered judgment in favor of the plaintiff for $37.00 and costs, which judgment upon an appeal to the Supreme Court of South Carolina was affirmed.

The facts disclosed by this stipulation are briefly as follows:

On November 20, 1910, the plaintiff, being the owner of a 1,000-mile mileage ticket or book, in which there were 425 unused mileage coupons, and which had been purchased from the defendant on November 1, 1910, at Greensboro, N. C., desiring to travel with his wife from Greensboro, N. C., to Greenville, S. C., and return, purchased from the defendant at Greensboro a second 1,000-mile mileage book at the price of $20.00, which price he had also paid for the first book and which price was at a reduced rate.

On said day the plaintiff presented both of said mileage books, each bearing his name and describing him by age, color, and in other ways, to the agent at Greensboro, and asked for and received two mileage exchange tickets for Greenville, S. C. The distance from Greensboro to Greenville is about 200 miles. There were consequently left in his first mileage book about 225 coupons and in his second about 800 coupons. It does not appear that the ticket agent at Greensboro noticed that both books were in plaintiff's name, or that anything at all passed between them in reference to the transaction.

The plaintiff and his wife traveled upon these mileage exchange tickets to Greenville, the same being accepted, and so far as the stipulation shows without question, by the conductor or ticket collector upon a regular passenger train.

They remained in Greenville until November 24, and on that day, wishing to return to Greensboro, the plaintiff again presented both of said mileage books to the ticket agent of the defendant at Greenville and asked for and received two mileage exchange tickets to Greensboro, N. C., the agent detaching from each book about 200 coupons, leaving in the first one about 25 coupons and in the other about 600 coupons. It does not appear that the ticket agent noticed that both books were in the plaintiff's name, or that they had any conversation at all in reference to the transaction.

The plaintiff and his wife boarded a train for Greensboro, and, after it had proceeded several miles, the defendant's ticket collector came through the train and asked the plaintiff for his ticket. He produced the two mileage exchange tickets which he had procured from the Greenville agent and offered one for himself and the other for his wife; and upon demand produced the mileage books, bought as before stated and issued in his name. The ticket collector, seeing that both were so issued, retained the book containing about 600 unused mileage coupons and the mileage exchange ticket corresponding therewith, claiming that the same were forfeited, and collected from the plaintiff fare for his wife.

Further, according to the stipulation of counsel, the defendant is a common carrier engaged in interstate commerce; during the month of November, 1910, and prior thereto, the defendant had printed and filed with the Interstate Commerce Commission and had published, posted, and was keeping open to public inspection, in full compliance with and in accordance with the Act to Regulate Commerce and the several acts amendatory thereof, schedules providing for the sale and issuance of interchangeable one-thousand-mile individual tickets or mileage books upon the terms and conditions set forth in said schedules at and for the price of twenty dollars ($20.00), or two cents (2¢) per mile, which said schedules, as required by said act of Congress and its amendments, plainly stated all the privileges and facilities granted or allowed and the rules or regulations which in anywise changed, affected, or determined any part of the aggregate of said rates, fares, and charges, or the value of the service rendered to passengers, and in all other respects complied with the requirements of the said act of Congress and its amendments and the rules of the Interstate Commerce Commission; among the regulations and conditions contained in said schedules, and in force throughout the month of November, 1910, and prior thereto, were the following:

> "*Exchange Requirement.*—Mileage coupons (except as noted below) will not be honored for passage on trains or steamers

or in checking baggage (except from non-agency stations and agency stations not open for the sale of tickets) but must be presented at ticket office and there exchanged for continuous passage ticket, which continuous passage ticket will be honored in checking baggage and for passage when presented in connection with the mileage ticket."

"*Non-transferable.*—If a mileage ticket or ticket issued in exchange for coupons therefrom be presented to an agent or conductor by any other than the original purchaser, it will not be honored but will be forfeited, and any agent or conductor of any line over which it reads shall have the right to take up and cancel such ticket or tickets."

Greenville was not a non-agency station, nor was it an agency station not open for the sale of tickets, but, on the contrary, it is an agency station open for the sale and exchange of tickets.

The defendant claimed in both the South Carolina courts that the mileage book and mileage exchange ticket were properly forfeited by virtue of the provisions of the act of Congress of the United States, known as the Act to Regulate Commerce, approved February 4, 1887, and the several acts amendatory thereof; but the South Carolina courts held to the contrary and the judgment rendered deprives the plaintiff in error of rights, privileges, and immunities to which it is entitled under said act.

Assignment of Errors.

(Transcript, page 16.)

"1. The Supreme Court of South Caroline erred in holding and deciding that the mileage exchange book and mileage exchange ticket were not properly forfeited, in that such decision was contrary to and in violation of the schedules and tariffs lawfully in effect, in pursuance to the so-called act of Congress, approved February 4, 1887, and the several amendatory thereof, enacted by the Congress of the United States in pursuance of the power granted it by article 1, clause 8, paragraph 3 of the Constitution of the United States, the benefit and protection of which said clause of the Constitution and said act of Congress were duly set up and specially claimed in these proceedings. The defendant insists that by a proper construction of said schedules and tariffs passed in pursuance of said act of Congress, the mileage book and mileage exchange ticket were properly forfeited.

"2. The said Supreme Court erred in holding and deciding that the mileage exchange book and mileage exchange ticket were not properly forfeited in that such was contrary to and in violation of the schedules and tariffs lawfully in effect, in pursuance of the so-called Act to Regulate Commerce, approved February 4, 1887, and the several acts amendatory thereof, by reason of the fact that the plaintiff, in tendering the mileage book and mileage exchange ticket for his wife, was acting as agent of his wife, and

by a proper construction of said tariff the stipulation in said tariff as to forfeiture of mileage books and mileage exchange tickets was applicable.

"3. The said Supreme Court erred in holding and deciding that the mileage book and mileage exchange ticket was not properly forfeited, apparently on the theory that the agent and employees of the defendant, by their actions, had waived the effect of the aforesaid provision as to forfeiture, and in holding that, as a consequence, the ticket collector of the defendant should have listened to the reasonable explanations of the plaintiff and should have been satisfied with the cash fare paid for the wife, in that such is contrary to and in violation of the tariffs and schedules lawfully in effect in conformity to the provisions of the so-called Act to Regulate Commerce, approved February 4, 1887, for said tariffs and schedules, lawfully in effect as aforesaid, became binding on the defendant and the plaintiff and upon the whole world as the only lawful provisions and conditions under which the mileage books and mileage exchange tickets might lawfully be used or honored for the transportation of passengers by this defendant and could not lawfully be waived, altered or changed by either plaintiff or defendant.

"4. The said Supreme Court, therefore, erred in affirming the judgment of the lower court and in rendering final judgment against the defendant."

ARGUMENT.

In the opinion of the Supreme Court of South Carolina (Trans., 10) no reference is made to the schedules, applicable in this case, governing the sale and issuance of mileage books and mileage exchange tickets, in force in pursuance of the Act to Regulate Commerce. The effect of this act on the ordinary rules of common law apparently was not considered.

Also it is not entirely clear on what ground or grounds the South Carolina court rested its opinion. It seems to hold that the book and the ticket should not have been forfeited because the husband, the original purchaser of the mileage book, in presenting them for his wife without fraud, was not violating the provision as to forfeiture, since the book and ticket were presented by the original purchaser. The court also seems to hold that the acts of the various agents in exchanging the coupons for the exchange tickets were such acts as to waive the provision as to forfeiture. The provision of the tariff was clearly applicable in this case, and the decision of the South Carolina Supreme Court in violation of its terms was clearly erroneous.

Necessity of Incorporating Provision as to Nontransferability and Forfeiture in Schedules.

The provision relating to non-transferability and forfeiture, as well as the one relating to the exchange requirement, quoted *supra,* found in the

mileage-book schedules is required by section 6 of the Act to Regulate Commerce to appear in the schedules. In part this section is:

> "The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee."

The said provisions are denials of privileges and are rules or regulations which change, affect, or determine the value of the service rendered the passenger.

In B. & O. R. Co. *vs.* Hamburger, 155 F., 849, the court, considering the failure of certain railroad companies to incorporate the non-transferable feature of excursion tickets in tariffs regulating the sale of the tickets, said, at page 851:

> "The published schedule filed with the Commission must show 'all privileges or facilities granted or allowed.' To illustrate: Whether the tickets sold between given points at fixed rates have attached the privilege of stop-over or the right of sale and

> transfer, as well as 'any rules or regulations which in anywise change, affect or determine any part of the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee.' Whatever may be said as to stop-over and such like advantages, the sale and transfer of the ticket is not only a privilege, but a right which directly enters into and affects the value of the ticket; and hence, if either the right is to be denied or the privilege abridged, under the plain language of the act in question, it must be shown in the published tariff and schedule of the company. The requirement in this respect is quite as positive as the one providing for publication of schedules showing such rates and charges, and prohibiting deviation therefrom."

Persuasive of this conclusion is also the case of Bitterman *vs.* L. & N. R. Co., 207 U. S., 205; 52 L. Ed., 171, which was an action to enjoin the sale of non-transferable excursion tickets. At page 221 it is said in part:

> "True, these cases were decided before the passage of the Act to Regulate Commerce, but the power of carriers engaged in interstate commerce to issue non-transferable reduced-rate excursion tickets was expressly recognized by that act, and the operation and binding effect of the non-transferable clause in such tickets upon all third persons acquiring the same and attempting to use them, and the duty of the carrier in such case to use due diligence to enforce a forfeiture, results from the context of the act."

See B. & M. R. Co. *vs.* Hooker, 233 U. S., 97; 58 L. Ed., 868, holding that a provision limiting liability for baggage to a certain amount unless a larger amount is declared and a proportional rate paid is a regulation affecting the value of the service rendered the passenger.

Construction of Provision of Schedule.

The pertinent provision of the mileage-book schedule is:

> "*Non-transferable.*—If a mileage ticket or ticket issued in exchange for coupons therefrom be presented to an agent or conductor by any other than the original purchaser, it will not be honored but will be forfeited, and any agent or conductor of any line over which it reads shall have the right to take up and cancel such ticket or tickets."

Technically and literally, it is true that the tickets were presented by the original purchaser, but the presentation was contrary to the evident intent and spirit of the language of the provision. The significance of the title to the provision, non-transferable, is that the ticket can be used only for the transportation of the original purchaser. The evident intent and purpose of the whole provision is also that the mileage book and exchange ticket can be used only for the transportation of the original purchaser. From the other viewpoint the pro-

vision has no rational basis and would defeat itself. The other construction would permit the original purchaser to get as many tickets in exchange for coupons as he liked, and so long as he made the formal presentation of them to the train agent his friends and companions could ride on them. No argument can be made for placing this formal presentation by the original purchaser in a favored class, in justification of an intent on the part of the framers of the provision. Further, the plain meaning of the terms is violated where there is such a presentation by the original purchaser for the transportation of another.

The ignorance or the good faith of the original purchaser or another in presenting the ticket contrary to the language of the forfeiture clause does not make the provision any the less applicable. The tariff speaks generally, regardless of the intent of the person presenting the ticket or tickets.

As a general rule, forfeitures are not favored, and he who claims a forfeiture must bring himself within the terms, but where the provision is clear, the intentions unmistakable, the court will not indulge in a play upon words to defeat such purpose and intention. This idea is well expressed in the case of B. & O. S. W. R. Co. *vs.* Evans (Ind.), 82 N. E., 773, 779:

> "It is true, as a primal rule, that forfeitures are not favored, either in equity or at law. It follows from this principle that provisions or stipulations of doubtful intent in instruments or documents providing for for-

feitures are to receive a strict construction against the person for whose benefit they are inserted. There is, however, no room for the application of this principle to the provision or stipulation contained in the contract herein involved. It is not impressed with any doubtful intent or meaning as to what was intended by the parties thereto. Appellant and appellee, by the express stipulation or provision that the use of the ticket should be limited to him and the dependent members of his family, and that the 'transfer for one or more trips involves a forfeiture,' certainly understood and contemplated what the legal results or consequences would be—*i. e.*, forfeiture—in the event of a transfer of the use of the ticket to persons other than the dependent members of his family in violation of the stipulation in the contract."

In Marche *vs.* Central R. R. Co. of N. J., 21 I. C. C. Rep., 195, the Interstate Commerce Commission has announced the rule "that tariffs are to be interpreted according to the reasonable construction of their language," citing the case of Newton Gum Co. *vs.* C., B. & Q. R. R. Co., 16 I. C. C., 341.

The Schedules in Effect Cannot Be Altered.

It is now no longer an open question before this Court that the schedules in force and effect by virtue of the provisions of the Act to Regulate Commerce are binding alike on carrier, shipper, and passenger; that no valid contract can be made

at variance with their terms, and that no indirect action will lie in tort for the negligence or the misrepresentation of the carrier's agents in quoting the provisions of these schedules. Thus it makes no difference whether the complaint in this action be considered as stating an action for breach of contract, or in tort for the negligence or misrepresentation, arising out of the acts of the agents of the plaintiff in error, if in fact the complaint can so be considered; nor whether the opinion of the South Carolina court be placed on the one or the other basis: for under neither can the recovery be justified.

For the convenience of the court its recent decisions laying down these principles are briefly reviewed:

Texas & P. Ry. Co. *vs.* Mugg & Dryden, 202 U. S., 242; 50 L. Ed., 1011: A station agent quoted to a shipper a lower rate than the filed one, and relying upon this quotation the shipper entered into a contract. The shipment was made and the higher rate collected. Damages were asked for the misrepresentation. The Court of Civil Appeals of Texas held that if the action had been based on the contract it would not lie, but that as it was based on the misrepresentation recovery could be had. Following the cases of Gulf, C. & S. F. R. Co. *vs* Hefley, 158 U. S., 98, 39 L. Ed., 910, and Southern Ry. Co. *vs.* Harrison, 119 Ala., 539, 24 So., 552, this court reversed the decision of the Texas court.

In T. & P. R. Co. *vs.* Abilene Cotton Oil Co., 204 U. S., 426, 51 L. Ed., 552, this Court, after stating the facts of the Mugg & Dryden decision, *supra,* thus explained the decision at page 445:

> "Reversing the judgment, it was here held that the rate fixed in the schedule filed pursuant to the Act to Regulate Commerce was controlling, that it was beyond the power of the carrier to depart from such rates in favor of any shipper, and that the erroneous quotation of rates made by the agent of the railroad did not justify recovery, since to do so would be, in effect, enabling the shipper, whose duty it was to ascertain the published rate, to secure a preference over other shippers, contrary to the Act to Regulate Commerce."

In N. Y. Central & H. R. *vs.* U. S., 212 U. S., 500, 53 L. Ed., 624, it is said, at page 504:

> "The legal and published rate was the one which the shipper was obliged to pay, and no arrangement for any different rate could have been enforced at any time against the carrier. Texas & P. R. Co. *vs.* Mugg, 202 U. S., 242; 50 L. Ed., 1011; 26 Sup. Ct. Rep., 628; Gulf, C. & S. F. R. Co. *vs.* Hefley, 158 U. S., 98; 39 L. Ed., 910; 15 Sup. Ct. Rep., 802."

In Kansas C. S. R. Co. *vs.* Albers Commission Co., 223 U. S., 573, 56 L. Ed., 556, it is said, speaking of the Act to Regulate Commerce, at page 597:

> "The chief purpose of the act was to secure uniformity of treatment to all, to suppress unjust discriminations and undue

> preferences, and to prevent special and secret agreements in respect of rates for interstate transportation, and to that end to require that such rates be established in a manner calculated to give them publicity, to make them inflexible while in force, and to cause them to be unalterable save in the mode prescribed."

In U. S. *vs.* Miller, 223 U. S., 599, 56 L. Ed., 568, it is said, at page 602:

> "That the act imposes upon common carriers subject to its provisions the duty of establishing in a prescribed mode the rates, whether individual or joint, to be charged for the transportation in interstate commerce of property over their lines, and that the rates so established are obligatory alike upon carrier and shipper, and must be strictly observed by both until changed in the mode prescribed, are propositions which are not only plainly stated in the act, but settled by repeated decisions of this court."

In C. & A. R. Co. *vs.* Kirby, 225 U. S., 156, 56 L. Ed., 1033, it is said, at page 166:

> "That the defendant in error did not see and did not know that the published rates and schedules made no provision for the service he contracted for is no defense. For the purposes of the present question he is presumed to have known. The rates were published and accessible, and, however difficult to understand, he must be taken to have contracted for an advantage not open to others. Texas & P. R. Co. *vs.* Mugg, 202 U. S., 242; 50 L. Ed., 1011; 26 Sup. Ct. Rep., 628."

In Kansas City S. R. Co. *vs.* Carl, 227 U. S., 9, 57 L. Ed., 683, the previous decisions of the urt are thus aptly briefed, at page 653:

> "Neither the intentional nor accidental misstatement of the applicable published rate will bind the carrier or shipper. The lawful rate is that which the carrier must exact and that which the shipper must pay. The shipper's knowledge of the lawful rate is conclusively presumed, and the carrier may not be required to surrender the goods carried upon the payment of the rate paid, if that was less than the lawful rate, until the full legal rate has been paid. Texas & P. R. Co. *vs.* Mugg, *supra.* Nor is the carrier liable for damages resulting from a mistake in quoting a rate less than the full published rate. Illinois C. R. Co. *vs.* Henderson Elevator Co., 226 U. S., 441, *ante,* 290; 33 Sup. Ct. Rep., 176. Nor can a carrier legally contract with a particular shipper for an unusual service unless he make and publish a rate for such service equally open to all. Chicago & A. R. Co. *vs.* Kirby, *supra.*"

In Penn. R. Co. *vs.* International Coal Min. Co.,) U. S., 184, 57 L. Ed., 1446, the court said, at ge 196:

> "When collected, it was unlawful, under any pretense or for any cause, however equitable or liberal, to pay a part back to one shipper or to every shipper. The statute required the carrier to abide absolutely by the tariff. It did not permit the company to decide that it had charged too much and

then make a corresponding rebate; nor could it claim that it had charged too little, and insist upon a larger sum being paid by the shipper. 24 Stat. at L., 379, §2; chap. 104, U. S. Comp. Stat., 1901, p. 3155; 25 Stat. at L., 855, §6, chap. 382, U. S. Comp. Stat. Supp., 1911, p. 1289; Armour Packing Co. *vs.* United States, 209 U. S., 56, 83; 52 L. Ed., 681, 695; 28 Sup. Ct. Rep., 428. The tariff, so long as it was of force, was, in this respect, to be treated as though it had been a statute, binding as such upon railroad and shipper alike. If, as a fact, the rates were unreasonable, the shipper was nevertheless bound to pay and the carrier to retain what had been paid, leaving, however, to the former, the right to apply to the Commission for reparation."

See also the cases of—

Ill. Cent. R. R. Co. *vs.* Henderson Elevator Co., 226 U. S., 441; 57 L. Ed., 290.

M., K. & T. R. Co. *vs.* Harriman Bros., 227 U. S., 657; 57 L. Ed., 690.

St. L. Southwestern Ry. Co. *vs.* Burckett, 229 U. S., 603.

Boston & M. R. Co. *vs.* Hooker, 233 U. S., 97; 58 L. Ed., 868.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. [redacted] 53

SOUTHERN RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

SAMUEL J. CAMPBELL, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR

WM. G. SIBBINE,
Attorney for Defendant in Error.

John G. Capers,
of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 337

SOUTHERN RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

SAMUEL J. CAMPBELL, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR

STATEMENT OF THE CASE

NOTE:—For convenience we will in this brief refer to the plaintiff in error as "Railway company," and the defendant in error as the "passenger."

Counsel for the railway company have correctly set forth the facts in their statement. In the original pleadings all of the allegations of the complaint except paragraphs 7 and 9 were admitted (pages 2 and 3). The 7th and 9th paragraphs were those alleging the violation of the passenger's rights.

ARGUMENT

There are four assignments of error, but a careful reading will show that Mr. Justice Watts of the Su-

preme Court of South Carolina, who wrote the opinion below, was correct when he said in this matter (page 10):

> "The whole question turns upon the point whether or not there was a contract printed in the mileage book by which plaintiff forfeited the same. This is raised by all of the exceptions."

It is admitted that the tariffs filed with the Interstate Commerce Commission must be given full force and effect by all Courts, but we deny that the railway company have any right under any provision of any tariff to which our attention has been called to declare the mileage book forfeited. In the many tariffs and supplements (page 5) referred to in the answer of the railway company, its counsel have been able to point out but one provision upon which to base their contention, and this was printed in the mileage book (page 4):

> "Non-Transferable.—If this ticket, or ticket issued in exchange for coupons from this ticket, be presented to any agent or conductor by any other than the original purchaser, it will not be honored, but will be forfeited, and any agent or conductor of any line over which it reads shall have the right to take up and cancel such ticket or tickets."

It seems to us that the only question in this case is whether or not the books were presented by the "original purchaser" within the meaning of the above provision.

In the brief of counsel for the railway company at page 11 it is admitted that "technically and literally it is true that the tickets were presented by the original purchaser."

When we turn over to page 12 we find the law stated in the case of B. & O. S. W. R. Co. v. Evans (Ind.) 82 N. E. 773:

> "It is true as a primal rule that forfeitures are not favored either in equity or at law. It follows from this truth that provisions or stipulations of doubtful intent in instruments or documents providing for forfeitures are to receive a strict construction against the person for whose benefit they are inserted."

This Court will not speculate upon what was in the minds of the framers of these tariffs and supplements. What they wrote is in plain English.

The conduct of the passenger shows there was no attempt at fraud. It would have been as convenient to have bought a mileage book in his wife's name had the agent issuing the first two mileage exchange tickets from Greensboro to Greenville called the passenger's attention to it. The agent likewise at Greenville on the return journey to Greensboro issued two tickets on the two books without looking at the signatures in the books and detecting the error. When the ticket collector on the train finally noticed the mistake the passenger promptly offered to pay the fare.

Counsel for the railway company express fear that any other construction than the one they now contend for "would permit the original purchaser to get as many tickets in exchange for coupons as he liked, and so long as he made the formal presentation of them to the train agent his friends and companions could ride on them."

This is not a fair or reasonable deduction, because in the case at bar there were as many mileage books as there were mileage exchange tickets. The railway

company would lose nothing in cases like this because every time a book is purchased money is paid in advance and every passenger is represented by a mileage book. But all of this is in the domain of conjecture and has the shadowy shape of the possible and not the probable.

If the makers of the tariffs had wished to provide for an instance like that of the passenger it would have been easy to have inserted the words "or for passage of a person other than the original purchaser."

Here is what they did say: "If this ticket * * * * be presented to any agent or conductor by any other than the original purchaser, etc."

If we follow the argument of counsel for the appellant to its last analysis it might be as well said that the passenger forfeited his mileage book when he asked the ticket agent at Greensboro to detach the coupons and issue a ticket.

The Court will observe that the word "ticket" is used loosely by the railway company to mean the mileage book itself in one place and the exchange slip which is given by the station agent at the time the coupons are detached.

In other words, if the contention of the appellant is correct the passenger should have forfeited his book because the "ticket" was "presented to any agent." Also it would follow that the forfeiture should have taken place at Greenville the second time when the passenger presented the book to the Agent.

This argument entirely loses sight of the fact that passengers on railway trains while bound by the rules of the railway company are not as a matter of fact usually aware of all of the intricate provisions of

railway tariffs, and these must be called to their attention by those whose duty it is to do so. The station agents at Greensboro and Greenville had every opportunity to inspect the signatures of the two books by simply glancing at the signatures thereon. This would have disclosed either to the agent at Greensboro in the first instance, or to the agent at Greenville a few days afterwards, that the passenger was getting two exchange tickets instead of one.

The cases cited by counsel for the railway company do not seem to be in conflict with any position we have taken in this case from its inception, and therefore we present no contra authorities.

We fail to see the analogy between the case at bar and the case of Texas & P. Ry. Co. v. Mugg & Dryden, 202 U. S. 242, where a station agent quoted to a shipper a lower rate than the authorized one. There the question was one of a contract in direct conflict with the requirements of the Interstate Commerce Commission. Here the question is: Was there an infraction of the rule? If the mileage ticket had been presented by any other than the original purchaser it might have been forfeited. We are not making any issue on this point. The fact is that the original purchaser presented the ticket.

Respectfully submitted,

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